



DATE: MAR 3 1989  
CASE NO. 88-INA-301

IN THE MATTER OF

NATIONAL SEMICONDUCTOR,  
Employer

on behalf of

FAHEEM MOHAMEDI,  
Alien

F. S. Halim, Esq.  
Houston, TX  
For the Employer

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge;  
and Brenner, DeGregorio, Tureck, Guill and Schoenfeld  
Administrative Law Judges

JEFFREY TURECK  
Administrative Law Judge

### DECISION AND ORDER

This application was submitted by the Employer on behalf of the above-named Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) (hereinafter "the Act"). The Employer requested review from U.S. Department of Labor Certifying Officer Benjamin Bustos' denial of a labor certification application pursuant to 20 C.F.R. §656.26.<sup>1</sup>

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive a visa unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and (2) the employment of the alien will

---

<sup>1</sup> All of the regulations cited in this decision are contained in Title 20 of the Code of Federal Regulations.

not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of Part 656 of the regulations have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means, in order to make a good faith test of U.S. worker availability.

This review of the denial of a labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties [see §656.27(c)].

### Statement of the Case and Discussion

On May 11, 1987, Employer, National Semiconductor Corporation, filed an application for alien employment certification to enable the Alien to be hired for the position of Product Engineer (AF 7475). The qualifications for the position, as set forth in Form ETA 750-A, were a Bachelor's Degree in Electrical Engineering and completion of all course requirements for a Master's of Science Degree in Electrical Engineering.

Resumes were received from six applicants in response to Employer's recruitment efforts. Employer reported that all of the applicants were rejected either because they lacked course completion for a Master's Degree in Electrical Engineering or owing to "a stated job objective on their resume outside of the semiconductor field." (AF 47, 58-69).

In a Notice of Findings ("NOF"), issued October 23, 1987 (AF 29), the Certifying Officer ("CO") identified two "interested" U.S. workers, Mr. Dad and Mr. Matlaubi, as "clearly more than meet[ing] the employer's actual minimum requirements . . . ." (AF 29) Citing §656.21(b)(7) of the regulations, the CO required Employer to provide written documentation that these two interested and available U.S. workers did not meet the Employer's actual minimum requirements as described by the job opportunity and that they were not rejected for other than lawful job-related reasons.<sup>2</sup>

In response to the NOF, Employer submitted a rebuttal dated November 21, 1987. Employer indicated that "Mr. Dad and Mr. Matlaubi were rejected as candidates because they were not seeking product engineering positions in the manufacturing of semiconductor devices." (AF 19-20).<sup>3</sup>

---

<sup>2</sup> Employer was advised that "[a]dequate documentation is to provide factual or substantial support for statements made or hypothesis proposed and can consist of, but not be limited to, official records or data, original signed statements by disinterested, knowledgeable persons, notarized affidavits, etc." (AF 29).

<sup>3</sup> Employer also noted a discrepancy in the job title between the job opportunity  
(continued...)

A Final Determination was issued on February 26, 1988 (AF 14-15). The CO determined that Employer had not complied with the instructions contained in the October 23, 1987 NOF, nor successfully rebutted those findings that there are able, willing, qualified and available U.S. workers for the job. The CO stated:

Although the employer submitted a notarized affidavit in response to the 10-23-87 NOF, it does not document that the U.S. workers, Mr. Dad and Mr. Matlaubi, do not meet the employer's minimum requirements, as described. Both applicants have both a B.S. and an M.S. degree in Electrical Engineering. Regardless of the career objectives stated in their resumes, each has indicated his interest in the job opportunity by applying and seeking an interview for the instant job opportunity. Mr. Matlaubi even expressed his interest "in the position of Product Engineer" in his introduction letter to Ms. Legee.

Twenty C.F.R. Part 656 requires an employer to establish that there are not sufficient able, willing, qualified and available U.S. workers for the job. The CO has identified two U.S. workers as qualified and available for the job. Employer has determined that because the applicants have stated career objectives outside of the semiconductor field, it follows that they do not possess interest in or the ability to perform the job duties because "they clearly lacked even minimum interest in or exposure to the complex engineering aspects of semiconductors and their related circuitry." (AF 4).

Employer unilaterally decided that the two applicants were not interested in the job. Employer never inquired of the applicants as to their interest in the job. As was noted by the CO, each has indicated an interest in the job by applying for it and seeking an interview. Additionally, Mr. Matlaubi specifically expressed an interest in the instant job opportunity in his cover letter. Accordingly, since it is apparent that Employer did not have a reasonable basis for concluding that they were not interested in the position, they were unlawfully rejected.

Since Employer has failed to document that the two identified U.S. workers were rejected for lawful job-related reasons, the denial of certification is affirmed.

---

<sup>3</sup>(...continued)

listed in Employer's Form ETA 750 and that stated in the NOF. While Employer stated that "[t]he difference between these two positions is quite significant . . ." (AF 7), we find this discrepancy inconsequential in that the applicants responded to and expressed interest in the Employer's listing, not the CO's, and the CO based his determination that the applicants were qualified for the position on the Employer's actual minimum requirements.

ORDER

The CO's denial of alien labor certification is affirmed.

JEFFREY TURECK  
Administrative Law Judge

JT:jb